

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

VICKY JONES,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.: 03: 05-cv-0420-F
)
UNITED STATES OF AMERICA,)
)
Defendant.)

**REPLY TO THE PLAINTIFF'S RESPONSE TO THE DEFENDANT'S
MOTION TO DISMISS, OR IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT**

Comes now the defendant, the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and in reply to the plaintiff's response to the defendant's Motion to Dismiss, or in the alternative, for Summary Judgment, states as follow:

1. In its Motion to Dismiss, or in the alternative, for Summary Judgment, the defendant asserted that the instant complaint was due to be dismissed as the underlying administrative claim was not timely filed, thus depriving this Court of subject matter jurisdiction. More particularly, the defendant asserted that since the plaintiff did not file her administrative claim within 60 days of this Court's dismissal of her earlier lawsuit arising from the same facts, she had not timely exhausted her administrative remedies as required under 28 U.S.C. §2401(b) and §2679(d)(5).

2. The plaintiff's response wholly fails to discuss the issue of the timeliness of her filing of the administrative complaint. While she asserts that she filed an appeal of the adverse decision rendered on her administrative claim, she offers no evidence that said claim was timely filed in the first instance, nor arguments or case law to sustain excusing her failure to timely file the same. Given the undisputed fact that the administrative claim was not timely filed, as well as the absence of any argument / facts excusing its untimely filing and considering the case law cited in the defendant's motion, the plaintiff has failed to demonstrate that she is entitled to maintain the instant lawsuit.

3. In sum, the plaintiff has failed to create a genuine issue of fact as to whether her administrative complaint was timely filed. Since there is no issue of fact as to this issue, nor adequate legal basis presented upon which the Court could otherwise rule, the complaint is due to be and should be dismissed with prejudice.

Respectfully submitted this 10th day of August 2005.

LEURA G. CANARY
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/EDF system which will send notification of such filing to Plaintiff's attorney, Richard F. Horsley, Esq.

s/R. Randolph Neeley
Assistant United States Attorney